



## **Attorney General Madrid Asks Supreme Court to Review Ruling in Child Abuse Case**

(Albuquerque, NM)— Attorney General Patricia Madrid filed a petition for writ of certiorari this week in the New Mexico Supreme Court to review the Court of Appeals ruling in the case of State v. Kevin Jensen, in which the Court of Appeals reversed Jensen’s child abuse by endangerment conviction. The victim, Robbie Stroup of Moriarty, disappeared around October 28, 2002 and his remains were later uncovered in a field outside Moriarty. At the time of his death, Stroup was 15 years old.

Prior to his disappearance, evidence showed Stroup had visited Jensen’s home every day for two or three weeks where Jensen would provide him with alcohol and access to Internet pornography. Evidence also showed that Jensen gave Stroup alcohol on the day he disappeared. Investigators who searched Jensen’s house where Stroup visited said the condition of the house was so bad that they were forced to wear face masks. Animal feces, vomit, urine and general filth littered the entire house, including the kitchen and living room area. A witness testified that Stroup spent most of his time in the kitchen and living room area where Stroup would access the Internet and eat meals prepared by Jensen. The conditions of Jensen’s house formed the basis of the child abuse by endangerment conviction. Yet the Court of Appeals overturned that conviction because at age 15 the Court concluded that Robbie Stroup should have known the danger of going into Jensen’s house.

Attorney General Madrid said, “This case presents an issue of substantial public interest. The Court of Appeals has interpreted the child abuse statute in a restrictive way which we believe will profoundly and adversely affect all future prosecutions. This raises a significant issue of constitutional law because the Court of Appeals rejected the Legislature’s plain language of what constitutes a ‘child’ under the statute. The Legislature has defined a child as any person under the age of 18. To require proof of a child being ‘defenseless,’ as this Court ruling declares, holds victims such as Robbie Stroup responsible for their own victimization, and I do not believe that was the intent of the Legislature when the child abuse statute was written.”

Attorney General Madrid’s petition argues that the Court of Appeals erred in that:

1. It failed to apply the child abuse statute as written by the Legislature and instead found that Stroup was not sufficiently “defenseless” to be considered a victim of the crime;
2. It reversed Jensen’s conviction for child abuse based upon this new finding, which was not presented to the jury, that not only must a “child” be under 18, but he or she also must be “defenseless,” which is not a valid legal requirement; and

3. It found insufficient evidence for the conviction based on the Court's determination that Stroup never actually became sick due to the filthy conditions of Jensen's home. This should not have been a valid basis for the Court's decision.

On March 22, 2004, a Torrance County District Court sentenced Jensen to the maximum of six years imprisonment, three years for the child abuse conviction, and three years for two convictions of contributing to the delinquency of a minor. In an opinion filed on October 18, the Court of Appeals reversed Jensen's conviction for child abuse. The two counts of contributing to the delinquency of a minor were not challenged on appeal.

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